PUBLIC SERVICE
EMPLOYEE RELATIONS BOARD

ANNUAL REPORT
for the
FISCAL YEAR ENDING MARCH 31, 1985

PUBLISHED BY AUTHORITY OF THE
PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

EDMONTON, ALBERTA

To Her Honour
W. Helen Hunley
Lieutenant Governor of the Province of Alberta

May it please your Honour,

On behalf of the Public Service Employee Relations Board, I respectfully submit to you the Annual Report for the period from April 1, 1984, to March 31, 1985, pursuant to the requirements of Section 77 of the Public Service Employee Relations Act, Revised Statutes of Alberta, 1980, Chapter P-33 and amendments thereto.

Respectfully submitted,

Neil Crawford
Government House Leader

To: The Honourable Neil Crawford
Government House Leader

Sir:

I have the honour to submit to you, on behalf of the Public Service Employee Relations Board, the Annual Report of the Board for the fiscal period April 1, 1984, to March 31, 1985.

Respectfully yours,

Catherine A. Fraser
Chairman

personnel

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

Chairman — Catherine A. Fraser, Q.C.

Alternate Chairman — Thomas W. Wakeling

Members —

Thomas K. Biggs

Jack Dyck

Leslie Miller

A. Rodrick Turpin

Executive Director — John F. Elsinga

Secretary — Gordon P. Procinsky

ANNUAL REPORT
OF THE

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD
FOR FISCAL PERIOD ENDING MARCH 31, 1985

introduction

The Public Service Employee Relations Act, Revised Statutes of Alberta 1980, Chapter P-33 came into force on September 22, 1977, upon proclamation by Order in Council 965/77, and was amended twice in 1983.

Section 17 of the statute embraces the right of an employee to be a member of and to participate in the lawful activities of a trade union, and to bargain collectively with an employer through a bargaining agent. The Act prescribes final and binding arbitration for the resolution of collective bargaining disputes and prohibits strike or lockout action. An employer and bargaining agent may at any time in their collective bargaining make joint application to the Public Service Employee Relations Board for the appointment of a mediator to assist in settling their dispute.

The legislation also requires that every collective agreement contain a procedure for the resolution of differences between the contracting parties as to the interpretation, application, operation or alleged contravention of their collective agreement, whether by third-party adjudication or such other method as they may agree upon.

The Public Service Employee Relations Act describes in considerable detail the basis upon which employees are to be included in or excluded from a bargaining unit of employees. In that regard Sections 9 and 21 of the Act confer authority upon the Public Service Employee Relations Board to make final and binding determinations where the bargaining agent and employer are unable to settle the matter of employee status for collective bargaining purposes.

Section 48 of the Act precludes the referral of certain items in dispute between the bargaining parties to arbitration. The Public Service Employee Relations Board has the responsibility and authority under the statute to make such determinations, a function that is an integral part of the Board's activities with respect to each application it receives seeking the establishment of an arbitration board for the resolution of a collective bargaining dispute.

Part 8 of the Act prohibits employees, trade unions and persons acting on their behalf from engaging in certain activities commonly referred to as unfair practices. In this part of the statute, the Public Service Employee Relations Board is given authority to inquire into complaints alleging such unfair practices and to impose remedial action when satisfied upon inquiry as to the substance of the complaint.

overview

A substantial number of collective agreements between employers and bargaining agents under the jurisdiction of the Public Service Employee Relations Act came open for renewal during the 1984-85 reporting period. In many instances direct negotiations failed to produce settlement and accordingly generated applications to the Board for the appointment of a mediator or alternatively, for the establishment of an arbitration board to assist in the resolution of a collective bargaining dispute.

The number of applications described elsewhere in this report do not reflect adequately the scope and complexity of the disputes which came to the Board's attention during this year. The number of Board hearing days, recorded in the annual statistics, may well provide a better indicator for that purpose. The current year, for example, marked the first occasion since the Act came into force in 1977 in which the negotiating parties were unable to settle the Master Collective Agreement without third-party assistance. That contract establishes many of the working conditions for employees of the Crown in right of Alberta.

A further reflection of the technical nature of the matters with which the Board was confronted was the frequency with which one of the affected parties sought judicial review of the Board's decisions. During the course of the year, five decisions of the Board were challenged in the courts, with two proceeding to the Alberta Court of Appeal level.

There were no amendments made to the Public Service Employee Relations Act during the reporting year. The composition of the Public Service Employee Relations Board was altered only by the appointment of an Alternate Chairman by Order in Council 287/84, effective April 11, 1984.

application

The Public Service Employee Relations Act applies to more than 45,000 public sector employees and their employers in the province of Alberta. Approximately 31,000 of these are employees of the Crown in right of Alberta. They comprise a single bargaining unit and function in one of some twenty-four departments in the provincial government's administration. The terms of employment for this group are determined by a common Master Collective Agreement between the Crown in its capacity as an employer and The Alberta Union of Provincial Employees as the certified bargaining agent. Twelve supplementary contracts structured on occupational groupings contain further conditions and benefit provisions having application to employees within each of the occupational components.

Collective bargaining in respect of other employers and employees within the jurisdiction of the Act is generally accomplished on the basis of single bargaining units. However, the Board does have authority under the statute to determine and establish more than one bargaining unit in respect of a single employer where it considers it appropriate and if it is satisfied that the regulation of relations between the employer and its employees would be more satisfactorily conducted. This is reflected, for example, in Board decisions that establish five functional bargaining units in respect of employees of those hospitals in the province which come within the purview of the Act.

Other employers and their employees to whom the Public Service Employee Relations Act applies include the following:

Corporations
- Alberta Mortgage and Housing Corporation
- Alberta Oil Sands Technology and Research Authority
- Alberta Opportunity Company
- Hail Crop Insurance Corporation

Commissions
- Alberta Alcoholism and Drug Abuse Commission
- Alberta Petroleum Marketing Commission
- Alberta Racing Commission

Universities (academic staff excluded)
- Athabasca University
- University of Alberta
- University of Calgary
- University of Lethbridge

Colleges (academic staff excluded)
- Banff Centre
- Fairview College
- Grande Prairie Regional College
- Grant MacEwan Community College
- Keyano College
- Lakeland College
- Lethbridge Community College

— Medicine Hat College
— Mount Royal College
— Olds College
— Red Deer College

Technical Institutes (academic staff excluded)
— Southern Alberta Institute of Technology
— Northern Alberta Institute of Technology
— Westerra Institute of Technology

Hospitals
— Alberta Children's Provincial General Hospital
— Foothills Provincial General Hospital
— Glenrose Provincial General Hospital
— The Provincial Cancer Hospitals Board
— University Hospitals Board
— The Mental Health Hospital Board, Edmonton
— The Mental Health Hospital Board, Ponoka

Boards
— Teachers' Retirement Fund Board
— Workers' Compensation Board

Councils
— Alberta Research Council

administration and personnel

The Public Service Employee Relations Board is responsible for the administration of the Public Service Employee Relations Act. The Board consists of four members, a Chairman and an Alternate Chairman. During the year under review, Thomas W. Wakeling of Edmonton was appointed as an Alternate Chairman of the Board for a term expiring November 2, 1985.

significant cases

Alberta Court of Appeal - Reference

The Public Service Employee Relations Act prohibits strikes and lockouts and imposes binding arbitration as the method for resolution of collective bargaining disputes. During the course of the reporting period, the Alberta Court of Appeal was asked for an opinion, by way of a Reference by the government of the Province of Alberta, whether the imposition of that procedure has interfered with the freedom of association of employees to whom the Act applies, having regard to the provisions of Section 2 of the Canadian Charter of Rights and Freedoms. For the purposes of the Reference, the comparable provisions found in the Labour Relations Act and in the Police Officers Collective Bargaining Act were included as part of that judicial review.

By Order in Council 141/84 passed on February 29, 1984, the following questions affecting the Public Service Employee Relations Act in particular were referred to the Court of Appeal for hearing and consideration:

"1. Are the provisions of the Public Service Employee Relations Act that provide compulsory arbitration as a mechanism for resolution of disputes and prohibit the use of lockouts and strikes, in particular, sections 49, 50, 93 and 94 thereof, inconsistent with the Constitution Act, 1982, and if so, in what particular or particulars, and to what extent?

2. Not Applicable.

3. Not Applicable.

4. Are the provisions of the Public Service Employee Relations Act that relate to the conduct of arbitration, in particular section(s) 48 and 55 thereof, inconsistent with the Constitution Act, 1982, and if so, in what particular or particulars, and to what extent?

5. Not Applicable.

6. Not Applicable.

7. Does the Constitution Act, 1982, limit the right of the Crown to exclude any one or more of the following classes of its employees from units for collective bargaining:
   (a) an employee who exercises managerial functions;
   (b) an employee who is employed in a confidential capacity in matters relating to labour relations;
   (c) an employee who is employed in a capacity that is essential to the effective functioning of the Legislature, the Executive or the Judiciary;
   (d) an employee whose interests as a member of a unit for collective bargaining could conflict with his duties as an employee?"

On December 7, 1984, the Court's Judgement was issued. On behalf of the majority, the Honourable Mr. Justice Kerans observed:

> "In the end, the argument which disposes of this case is the very basic one for a measure of restraint in the face of what seems to be an exaggerated or fanciful Charter interpretation. I am not persuaded that all actions by all groups to carry out all group purposes are Charter-protected, or that the prohibition of strikes in the legislation before us does limit the freedom of association of the workers involved. This being so, s. 1 and the issues arising thereunder need not be considered. The answer to QQ. 1, 2 and 3 must be no. As QQ. 4 to 6 assume an affirmative answer to the first three questions, counsel accept that the issues raised by them need not be dealt with. I will deal with Q. 7 later.
>
> In summary, I repeat that I am not persuaded either that the right to strike in vacuo is Charter-protected or that the abolition of the right to strike in the legislation under review has an effect which contravenes the Charter."

With respect to Question 7 in the Reference, Justice Kerans stated:

> "It remains only to deal with the question, if we can, in abstract terms. In that regard, I detected little or no disagreement amongst counsel. On the one hand, it seemed self-evident to counsel that a law which forbids somebody to join a union which, in the absence of that law, he could join, limits his freedom of association even in a limited sense because it limits his freedom of expression. On the other hand, the categories mentioned in the question seem to strive to describe employees who, because of the nature of their work, would have a very direct, significant and immediate conflict between duties owed to fellow members of the unit (assuming that the unit organization demands some measure of solidarity) and the special duties owed to the employer. There was no serious argument offered against the proposition that an exclusion is justified in a free and democratic society if it could be demonstrated that there is a significant conflict of duty on the part of the employees, because, I suppose, the collective-bargaining system as we know otherwise could not work. But, even this statement requires a review of that system under s. 1 which no intervenant undertook or expressed any interest in our undertaking. The real dispute seems to be whether in fact there is, for a given employee under the categories in the legislation, a significant conflict of duty. That, of course, is a fact-issue which we cannot decide, nor are we asked to.
>
> In the end, it is impossible to offer any meaningful answer to the question and respectfully I decline to offer any further answer.

Conclusion

> For the reasons given I certify that my opinion to the Lieutenant Governor in Council to QQ. 1 through 3 inclusive is No. In consequence, there is no need to deal with QQ. 4 through 6. For the reasons given, I cannot answer Q. 7."

The Judgement was concurred in by the late Chief Justice McGillivray, Justice Stevenson and Justice McDonald, an ad hoc member of the panel. The partial dissent by Justice Belzil is summarized in the following excerpt from the Judgement:

> "Belzil J.A. (dissenting in part): — I have read the majority opinion and while I agree that the first three questions must be answered in the negative, I do so for different reasons. In my view the next three questions must also be answered in the negative. With respect, I disagree with the majority's opinion on the seventh question. In my opinion this last question must be answered in the affirmative."

An appeal from this Judgement has been initiated by The Alberta Union of Provincial Employees and is scheduled for hearing by the Supreme Court of Canada in late June of 1985. (Ref. re Pub. Service, etc. [Alta] [1985] 2W.W.R. 289).

judicial review - cases

A number of the decisions issued by the Board during the 1984/85 fiscal period were challenged in the Courts. These are identified below:

1. The University of Alberta Hospitals Staff Nurses Association, Edmonton, Alberta
   (Applicant)
   and
   The University Hospitals Board, Edmonton, Alberta
   (Respondent)
   and
   The Public Service Employee Relations Board
   (Respondent)

   In this action the Applicant requested the Court of Queen's Bench to quash or set aside certain parts of the Board's decision. That decision dealt with the establishment of an arbitration board and determinations pursuant to Section 48 of the Public Service Employee Relations Act as to whether or not particular items in dispute between the affected bargaining parties could be referred to the arbitration board for resolution. (PSERB Ref. 140-037-516)

   The action was subsequently withdrawn and therefore did not attract judicial review.

2. The Board of Governors, University of Alberta, Edmonton, Alberta
   (Applicant)
   and
   The University of Alberta Non-Academic Staff Association, Edmonton, Alberta
   (Respondent)
   and
   The Public Service Employee Relations Board
   (Respondent)

   This action commenced with a decision by the Board to establish an arbitration board and to refer to it certain items which the Board had determined to be arbitral in accordance with the statute.

   Subsequently, by its own motion and upon notice to the parties and a further hearing, the Board reconsidered a part of its previous decisions, resulting in the referral of two additional arbitral items to the arbitration board.

   The Applicant then applied to the Court of Queen's Bench for an order to quash the Board's decision to reconsider its earlier decision and similarly to quash and set aside determinations made by the Board which resulted in the referral of the two additional items in dispute to the arbitration board for resolution.

   The judgement of the Court in this action affirmed the Board's authority to reconsider a previous decision. Nonetheless, on

technical and procedural grounds, the Court held that the Board was prohibited by the statute from referring the two additional arbitral items to the arbitration board and accordingly quashed the decision under review.

The Board joined in an appeal from the decision of the Court of Queen's Bench, one which is scheduled to be heard in May, 1985. (PSERB Ref. 140-069-520)

3. The Governors of The University of Lethbridge, Lethbridge, Alberta
(Applicant)
and
The Alberta Union of Provincial Employees, Edmonton, Alberta
(Respondent)
and
The Public Service Employee Relations Board
(Respondent)

This matter originated with a decision by the Board establishing an arbitration board and directing to it certain items determined to be arbitral and therefore referrable to the arbitration board for resolution. The Applicant sought to have the Court of Queen's Bench quash the Board's decision in respect of three arbitral items.

When the Court upheld the Board's determinations in respect of the three arbitral items under review, the Applicant initiated an action in the Court of Appeal to have the lower Court's judgement overturned. However, this application was subsequently withdrawn, leaving the original decision of the Board intact. (PSERB Ref. 140-051-502)

4. The Alberta Union of Provincial Employees, Edmonton, Alberta and John Booth, Edmonton, Alberta
(Applicants)
and
Her Majesty The Queen in right of the Province of Alberta
(Respondent)
and
The Public Service Employee Relations Board
(Respondent)

In a decision issued October 10, 1984, the Board refused to establish an arbitration board in respect of a dispute affecting the union and the employer relating to the administrative support services component of the general service bargaining unit.

By way of applications to the Court of Queen's Bench, the Applicant requested the Court to quash the Board's decision and moreover, to issue an order to compel the Board to establish an arbitration board as had been originally applied for, or in the alternative, to compel the Board to reconsider the application "in accordance with appropriate principles of law."

In an oral decision, the Court affirmed the Board's decision and accordingly declined to direct that the Board rehear the matter. (PSERB Ref. 140-003-502)

5. Her Majesty The Queen in right of the Province of Alberta
(Applicant)
and
The Alberta Union of Provincial Employees, Edmonton, Alberta
(Respondent)
and
The Public Service Employee Relations Board
(Respondent)

On December 31, 1984, the Board issued Reasons for Decision in support of earlier decisions to establish an arbitration board relating to the Master Collective Agreement and referring to said arbitration board certain items in dispute which it had determined to be arbitral within the meaning of Section 48 of the statute.

By application to the Court of Queen's Bench, the Applicant requested the Court to quash certain of the Board's determinations on arbitrability of items claimed in dispute. The application was heard in early March of 1985 and a decision is pending (PSERB Ref. 140-001-502)

6. The Foothills Provincial General Hospital, Calgary, Alberta
(Applicant)
and
The Health Sciences Association of Alberta, Edmonton, Alberta
(Respondent)
and
The Public Service Employee Relations Board
(Respondent)

In a decision issued December 21, 1984, the Board determined that four persons employed by the Applicant as Assistant Divisional Head Technologists were employees for the purposes of the statute and included in the bargaining unit in respect of which the Respondent Association was the certified bargaining agent.

The Applicant by Notice of Motion dated January 25, 1985, requested the Court of Queen's Bench to quash the decision of the Board. The matter is scheduled for hearing in May, 1985. (PSERB Ref. 100-041-506-6)

7. The Mental Health Hospital Board, Edmonton of
Edmonton, Alberta
(Applicant)
and
The Alberta Union of Provincial Employees, Edmonton, Alberta
(Respondent)
and

Lydia P. Ricafort, Calgary, Alberta
(Respondent)
and
The Public Service Employee Relations Board
(Respondent)

In a decision and reasons issued on March 23, 1984, the Board held that, by altering a term or condition of employment of an employee during a period when such alteration was prohibited absent the bargaining agent's consent, the employer had contravened Section 71 of the Act.

The Applicant as a result applied to the Court of Queen's Bench for an order setting aside or quashing the Board's decision, an action that was dismissed by a judgement issued by the Court on July 15, 1984.

An appeal from that judgement was initiated by the Applicant on August 16, 1984, and was heard in early March, 1985. The Court of Appeal reserved its decision at that time and its judgement is pending. (PSERB Ref. 160-111-502)

ANNUAL STATISTICS AND COMPARATIVE DATA

April 1, 1984, to March 31, 1985

Section of Act	Nature of Application		Disposition 1982/83	1983/84	1984/85
9	Determinations	Granted	13	5	5
		Dismissed	0	0	0
		Withdrawn	5	3	2
		Outstanding	4	5	2
11	Reconsideration	Granted	5	1	3
		Outstanding	0	2	0
		Dismissed	0	0	8
23	Professional Exclusion	Granted	10	0	0
		Refused	0	0	0
		Outstanding	0	0	0
25	Certification	Granted	13	2	1
		Refused	7	0	1
		Withdrawn	1	0	0
		Outstanding	0	1	2
32	Revocation	Granted	2	0	0
		Refused	0	0	0
		Outstanding	0	0	0
39	Failure to Bargain in Good Faith	Granted	1	1	0
		Refused/Dismissed	0	0	2
		Withdrawn	1	0	0
46	Appointment of Mediator	Granted	1	1	4
		Withdrawn	0	0	0
49	Establish Arbitration Board	Granted	21	8	10
		Refused	2	1	6
		Withdrawn	1	4	4
		Outstanding	0	2	11
52	Appointment Chairman & Member Arbitration Board	Granted	11	3	3
		Refused	0	0	0
		Withdrawn	0	0	0
64	Appointment of Adjudicator	Granted	4	0	1
		Withdrawn	0	1	0
		Refused	0	0	1
74	Unfair Practice Complaints	Granted	0	0	0
		Dismissed	1	0	0
		Refused/Withdrawn	1	0	2
		Outstanding	0	1	1
90	Successor Trade Union	Granted	0	0	2
		Dismissed/Withdrawn	4	2	0

Days of Board Hearings	— 1982/83	41 Days
	— 1983/84	26 Days
	— 1984/85	39 Days
Estimated number of employees affected by Certification		
	— 1982/83	2,962
	— 1983/84	325
	— 1984/85	185
Total applications disposed of		
	— 1982/83	105
	— 1983/84	29
	— 1984/85	55
Total applications outstanding		
	— 1982/83	4
	— 1983/84	9
	— 1984/85	16

budgetary review

Approved Manpower and Operating Costs

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

		% Change
1982/83	687,370*	+ 51.3*
1983/84	411,676**	— 40.1**
1984/85	522,313***	+ 26.9***

* includes $350,000 Special Warrant.
** includes $77,000 Special Warrant.
*** includes $194,000 Special Warrant.

in appreciation

The Board takes this opportunity to publicly express its appreciation to the Honourable Neil Crawford and his Executive Assistant, Mr. John Scrimshaw for their assistance and cooperation in dealing with the concerns of the Board throughout this past year.